



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 29, 2023

IN THE MATTER OF:

Appeal Board No. 629115

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination, holding the claimant eligible to receive benefits, effective November 7, 2022. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause. The Commissioner of Labor objected that the employer's hearing request was not made within the time allowed by statute.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 14, 2023 (), the Administrative Law Judge granted the employer's application to reopen 123-00078, overruled the Commissioner of Labor's objection as to the timeliness of the employer's hearing request, overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination and overruled the employer's objection. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a further hearing. The Judge, without modifying the original basis in accordance with Board Rule 12 NYCRR § 461.4 (d), based the decision upon facts and circumstances other than those specified in the initial determination.

At the further hearing, the parties will testify regarding the claimant's separation from employment to retire. In furtherance of such testimony, the parties will offer additional testimony and evidence regarding the following:

- * whether the claimant had intended to leave the labor market at the time of his separation in January 2021,
- * whether he did leave the labor market, and if not, why not,
- * whether the claimant worked after his separation date in January 2021,
- * if so, for whom he had worked, the duration of that employment, his earnings/rate of pay from such employment, and why he is no longer employed.

Any documentary evidence in furtherance of such testimony shall be produced at hearing for introduction into the record, after the opportunity for objection.

The parties are also placed on notice that the Judge may consider, at the further hearing, that the claimant resigned to accept a severance package from the employer. Additional testimony and evidence shall be taken regarding the following:

- * the "climate of uncertainty and fear" of the loss of employment at the time of severance package was offered,
- * whether the employer had a substantial downsizing goal,
- * Whether there were criteria for the selection of the targeted individuals,
- * whether the claimant was targeted,
- * the claimant's seniority and ranking for the target,
- * what would occur if the goal for the incentive was not achieved,
- * the incentives provided for the downsizing.

Any documentary evidence in support of such testimony, including but not limited to the severance agreement itself, shall be offered at hearing for entrance into the record after an opportunity for objection.

The Judge should take any additional testimony and evidence necessary to complete the hearing.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the initial determination and overruled the employer's objection, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing upon the initial determination of eligibility and the employer's objection based upon voluntary separation, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER